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ABSTRACT

Church-state issues in education have a long history in America. Although the U.S. Supreme Court has made several landmark decisions with regard to the separation of church and state in schools, strong conservative influences in Southern states, including Louisiana, have resulted in state statutes and individual school-district policies and practices that continue to "push the envelope" with regard to matters of church and state. This paper presents case summaries that are illustrative of the litigation involving the state of Louisiana, or school districts within the state, involving religion and education. In each case, the courts attempted to determine "intent" of the particular statute, policy, or practice. The case summaries focus on the following topics: equal-time instruction for creation science to balance instruction in evolution; teachers reading a disclaimer immediately before the teaching of evolution; public-school students and teachers observing a brief time in silent meditation at the start of each school day; coercion of a Muslim student to accept a Bible by the school principal; and prayer delivery before home football varsity games. The paper concludes with a discussion of four types of dilemmas a practicing administrator has to deal with on a yearly, or even daily basis. (RT)

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Religion and Education in Louisiana.

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Religion and Education in Louisiana

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I. Historical Perspective

Church-state issues in education have a long history in our country. While the U.S. Supreme Court has made several landmark decisions with regard to the separation of church and state in schools, strong conservative influences in Southern states, including Louisiana, have resulted in state statutes and individual school district policies and practices that continue to "push the envelope" with regard to matters of church and state.

The debate, as it so often does, centers on the delicate balance between the Establishment Clause and the Free Exercise Clause of the First Amendment. Organizations like the American Civil Liberties Union and Americans United for the Separation of Church and State routinely cite the Establishment Clause as they attempt to erect a solid wall of separation between church and state. Conservative groups like the American Center for Law and Justice focus more on the Free Exercise Clause, arguing that it is unconstitutional not to allow freedom of religious expression in the public square, including in schools.

The U.S. Supreme Court, in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), used a three-part test to determine if a government action is constitutional. In order to pass constitutional muster, the statute or policy must, 1) have a secular purpose, 2) neither advance nor inhibit religion, and 3) not cause excessive entanglement between government and religion. Many lower courts today still use the *Lemon Test* to help determine constitutionality, although the current U.S. Supreme Court, particularly the more conservative members, favors a *Coercion Test* as used in *Lee v. Weisman*, 505 U.S. 577 (1992), or the *Endorsement Test* as applied in *Lynch v. Donnelly*, 465 U.S. 668 (1984). The first prong of the *Lemon Test* is one that has been looked at critically in the Louisiana cases that will be discussed later. Courts like the U.S. Court of Appeals for the Fifth Circuit have paid a great deal of attention to the intent of legislation or policies and, more often than not, have found the legislators', school board's, or school administrator's intent to have a purpose that is more sectarian than secular. The legislature and school boards have not been subtle, as evidenced by comments in public meetings, in expressing their desires to get religion back into the schools. Unfortunately for them, these public utterances, often part of an official meeting record, is evidence of their intent being sectarian rather than secular.

One of the U.S. Circuit Courts of Appeals that has been very active in matters of church and state is the previously mentioned Fifth Circuit. The Fifth Circuit Court of Appeals, based in New Orleans, is the appellate court

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for federal cases originating in Louisiana, Texas, and Mississippi. These states, particularly Louisiana and Texas, have repeatedly been involved in litigation challenging their statutes, or calling into question policies and practices by school districts in their states.

The landmark Supreme Court decision *Edwards v. Aguillard*, 482 U.S. 578 (1987), originated in Louisiana and dealt with a state statute requiring a balanced treatment between the teaching of evolution and "creation science." Since that momentous decision, school districts in Louisiana, as well as other Southern states, continue to seek ways around it, as will be discussed in detail in the next section. A more recent decision involving prayer at football games dealt with a case that originated in Texas. Another Louisiana case from the Fifth Circuit, *Freiler v. Tangipahoa Parish Board of Education*, 185 F.3d 337 (5th Cir. 1999), a case involving a disclaimer to be read before teaching about evolution, came within one vote of being granted certiorari by the U.S. Supreme Court. A U.S. Supreme Court decision involving state allocation of educational materials and equipment to private schools, *Mitchell v. Helms*, 530 U.S. 793 (2000), also had its origins in Louisiana.

A recent change in a Louisiana statute regarding prayer in schools, which did not have one "no" vote in the Legislature, was struck down by the Fifth Circuit Court of Appeals in *Doe v. School Board of Ouachita Parish*, 274 F.3d. 289 (5th Cir. 2001). And, more recently, a federal district court ruled in *Jabr v. Rapides Parish School Board*, 171 F.Supp. 2d 653 (2001), that school administrators, or any other agent of the school, may not hand out Bibles to students.

Yet another recent case in Louisiana centered on Governor Mike Foster's abstinence-only sex education program. The ACLU of Louisiana filed suit and argued that the program funneled money to groups that advanced religion and presented abstinence from a religious perspective (*ACLU of Louisiana v. Foster*, Civ. 02-1440, E.D. La., 2002. Available at 2002 U.S. Dist. LEXIS 13778). In a case that doesn't deal with education, the Fifth Circuit recently overturned a federal district court's decision that Louisiana's anti-abortion "Choose Life" license plate program was unconstitutional. It remains to be seen if this case is appealed to the U.S. Supreme Court.

While this might seem to be a small number of cases, schools and districts in Louisiana continue practices that would probably be ruled unconstitutional if someone with standing were to challenge the policies and practices. Despite the Supreme Court's ruling in a case that originated in Texas, *Santa Fe Independent School District v. Doe*, 120 S.Ct. 2266 (2000), prayer before athletic events is a common, and expected, part of community culture, and the more rural the community, the more a part of the culture it seems to be.

While there has always been an element of society that wanted to "get God back into schools," recent events in the United States have brought the issue to the forefront. One event was the shooting at Columbine High School in Littleton, Colorado. Another was the terrorist attack on September 11, 2001. The terrorist attack, in particular, spurred a new patriotic fervor, as well as stimulating a push by conservatives to return to prayer in schools. Several school districts, including Tangipahoa Parish School District in Louisiana, approved a policy to display "In God We Trust" posters in its schools. The district made the point that this was simply our nation's official motto, and not an attempt to incorporate religion into schools. Many other schools throughout the United States have reacted similarly. The Tangipahoa Parish School Board, according to the September 2, 2002 *Hammond*

Daily Star, also announced that to commemorate September 11, the board would start its first September, 2002, meeting with a ceremony in which students from area schools would lead a prayer. The practice of opening public meetings, including school board meetings, is commonplace in Louisiana and other Southern states.

Parents are vocal in their efforts to make sure traditions, many of them religious in nature, continue, and administrators, sometimes reluctantly and sometimes not, often acquiesce to community pressure. The last part of the presentation will be made by a former Louisiana school principal who will address the uncomfortable position administrators find themselves in when walking the fine line between what they know is law and community demands that, if not followed, could result in losing one's job or possible reassignment.

II. Case Law

The case summaries that follow, while not all-inclusive, are illustrative of the litigation involving the state of Louisiana, or school districts within the state, involving religion and education. Each case involved the courts attempting to determine "intent" of the particular statute, policy or practice. The final case, *Santa Fe Independent School District v. Doe*, while not a Louisiana case, still has implications for the state since it was heard by the Fifth U.S. Circuit Court of Appeals, and since the issue involved (prayer at athletic events) is one with which all Louisiana public school administrators must deal.

EDWARDS v. AGUILLARD
482 U.S. 578 (1987)

FACTS:

Louisiana's legislature passed the "Balanced Treatment for Creation-Science and Evolution-Science in Public School Instruction Act." The Act called for equal time instruction in creation science when evolution theory was taught. Neither topic was required to be taught at all, but if either was taught, the other also had to be taught. Further, the statute specified the development of curriculum guides and supplied research services for creation science only. A group of parents, teachers, and religious leaders challenged the constitutionality of the Act in federal court. School authorities charged with implementing the Act defended it on the ground that its stated purpose was to protect a legitimate secular interest: academic freedom. The federal district court ruled the Act unconstitutional and state education officials appealed to the Fifth Circuit Court of Appeals. The appeals court affirmed, ruling the statute did not protect academic freedom and attempted to discredit evolutionary theory by substituting religious instruction in the form of creationism. The case was appealed to the U.S. Supreme Court.

HOLDING:

The U.S. Supreme Court (7-2) affirmed the rulings of the two lower courts.

RATIONALE:

Justice Brennan argued that the Act failed all three prongs of the *Lemon Test*. First, it was not enacted to further a clear secular purpose. Second, the primary effect of the law was to advance the viewpoint that a "supernatural being created humankind," a dogma central to the beliefs of certain religions. Third, the law significantly entangled the interests of church and state by seeking "the symbolic and financial support of government to achieve a religious purpose."

Making an analogy to *Wallace v. Jaffree*, 472 U.S. 38 (1985), the Court did not regard the Act as furthering its stated purpose, even if "academic freedom" were read broadly to mean teaching all of the relevant evidence, because the Act did not grant additional teacher flexibility and because its provisions evidenced a discriminatory preference for the teaching of creation science and against the teaching of evolution.

The Court also relied on legislative history, particularly statements made by the Act's sponsor, during pre-enactment hearings.

FREILER v. TANGIPAHOA PARISH BD. OF EDUCATION
185 F. 3d 337 (5th Cir. 1999)
Cert. Denied

FACTS:

The Tangipahoa Parish School Board (TPSB) in Louisiana passed a resolution that required teachers to read a disclaimer immediately before the teaching of evolution. In part, the disclaimer read: *It is hereby recognized by the Tangipahoa Board of Education that the lesson to be presented, regarding the origin of life and matter, is known as the Scientific Theory of Evolution and should be presented to inform students of the scientific concept and not intended to influence or dissuade the Biblical version of Creation or any other concept. It is further recognized by the Board of Education that it is the basic right and privilege of each student to form his/her own opinion and maintain beliefs taught by parents on this very important matter of the origin of life and matter. Students are urged to exercise critical thinking and gather all information possible and closely examine each alternative toward forming an opinion.* The ACLU, on behalf of Herb Freiler and two unnamed plaintiffs, parents of children in the Tangipahoa Parish Public Schools, filed a suit in U.S. District Court for the Eastern District of Louisiana. The plaintiffs claimed that the disclaimer was for purely religious purposes which violated the separation of church and state. The district court ruled that the disclaimer constituted an establishment of religion in violation of the First Amendment. The School Board appealed to the Fifth Circuit Court of Appeals.

HOLDING:

The Fifth Circuit Court of Appeals affirmed the district court's ruling.

RATIONALE:

The district court decided that the disclaimer was devoid of secular purpose and did not pass the first prong of the three-part Lemon Test. The court discounted the school board's stated secular purpose of promoting critical thinking and information gathering by students on the subject of the origin of life. The court noted that TPSB members did not mention this secular purpose during the debate for adoption of the disclaimer and that the TPSB already encouraged students to think critically about all issues. The court ruled that the disclaimer was for one purpose — to protect and maintain a particular religious viewpoint and to satisfy the religious concerns of the majority. This clearly violated the separation of church and state. The appellate court affirmed and added that the disclaimer also failed the second prong of the Lemon Test and the Endorsement Test. By the endorsement of one particular religious viewpoint over another, the disclaimer advanced a particular religion, a further indication that there was a violation of the First Amendment. The appellate court went on to call the school board's stated purpose for the disclaimer a "sham."

Note: Following this decision, the school board asked for a hearing en banc and was denied by a vote of 8-7. The school board then appealed to the U.S. Supreme Court which denied cert. by a vote of 6-3.

DOE v. SCHOOL BD. OF OUACHITA PARISH
274 F.3d 289 (5th Cir. 2001)

FACTS:

A 1976 state law in Louisiana allowed public school students and teachers to observe a "brief time in silent meditation" at the start of each school day. In 1992 the law was amended to allow for a "brief time in silent prayer or meditation." Another amendment, in 1999, deleted the word *silent* from in front of the word "prayer." The bill was signed into law by Governor Foster. The law then read, "Each parish and city school board in the state shall permit the proper school authorities of each school within in its jurisdiction to allow an opportunity, at the start of each school day, for those students and teachers desiring to do so to observe a brief time in prayer or meditation." One mother (identified only as Jane Doe) of a West Monroe High School student said her son and another boy were called "atheist" and "devil worshipper" after they refused to participate in the prayer. A group of students and parents filed suit claiming the statute was unconstitutional. The federal district court agreed with the plaintiffs and ruled the law unconstitutional. The state appealed.

HOLDING:

The U.S. Court of Appeals for the Fifth Circuit affirmed the lower court's ruling that the law was unconstitutional.

RATIONALE:

Fifth Circuit Senior Judge John Duhe, Jr., wrote that the amendment to the previous statute was to return verbal prayer to public schools and was therefore in violation of the Establishment Clause of the First Amendment. The law, as amended, did not pass the *Lemon Test* because it did not have a clear, secular purpose. The court also cited the fact that the legislator who sponsored the amendment was on record as saying the amendment was intended to allow verbal prayer back in schools. Duhe wrote that the Louisiana case was almost identical to *Wallace v. Jaffree*, 472 U.S. 38 (1985), in which the Supreme Court struck down a similar statute.

NOTE: Following this ruling, Louisiana's legislature passed legislation returning the statute to its original form prior to having the word *silent* removed. Therefore, current state law goes back to the wording of the 1992 amendment that allows for "a brief time in silent prayer or meditation."

JABR v. RAPIDES PARISH SCHOOL BOARD
171 F.Supp. 2d 653 (2001)

FACTS:

A Muslin family had two children enrolled in the Rapides Parish school system. One of their children, Hesen, was a fifth-grader at Pineville Elementary School. The parents of Hesen claimed that the school's principal called children, including Hesen, into his office as the Christmas holiday approached, wished the children a "Merry Christmas," and presented each child with a Bible. When Hesen declined the Bible, she was told to "just take it." The parents said that their daughter felt pressured to accept the Bible. Additionally, the Jabr family alleged that their daughter "suffered scorn and ridicule from other students" after she explained that her family doesn't believe in the Bible. The defendants argued that the girl was not forced to accept the Bible and could have chosen not to accept it. The family, claiming that the school district violated the Establishment Clause whether or not students had a choice to take the Bible, filed suit in federal district court seeking injunction of the practice of distributing Bibles to children in the Rapides Parish school system..

HOLDING:

The district court enjoined the district and its personnel from continuing the practice of Bible distribution and ruled the practice unconstitutional.

RATIONALE:

Judge F. A. Little, Jr. used the "Lemon Test," the "Coercion Test," and the "Endorsement Test," and ruled that the principal's actions violated all three tests. The judge ruled that the principal was clearly trying to promote Christianity. The judge also cited the third prong of the "Lemon Test" when writing that the principal's actions entangled government with religion.

With regard to the school district's argument that the practice was not "coercive," the judge disagreed, stating that it is not reasonable to expect a fifth-grader to decline the Bible or walk out of the principal's office and open herself to peer pressure and ridicule.

The school district had used a previous Fifth U.S. Court of Appeals decision, *Meltzer v. Board of Instruction of Orange County, Florida*, 577 F.2d 311 (1978), to argue that case law supported its position. In *Meltzer*, the court ruled that a district's policy for Bible distribution and other books, at a designated location within the school, was not unconstitutional. However, Judge Little, in this case, ruled that the circumstances were not similar to those in *Meltzer* and that the principal's actions far exceeded what was approved by the Fifth Circuit in the *Meltzer* case.

ACLU of LOUISIANA v. FOSTER
Civ. 02-1440, E.D. La. (2002)
(Available at 2002 U.S. Dist. LEXIS 13778)

FACTS:

The state of Louisiana established, in 1998, the "Governor's Program on Abstinence (GPA)" in an effort to distribute acquired federal funds to develop sex education programs that "have as their exclusive purpose, teaching the...gains to be realized by abstaining from sexual activity." The federal funds had become available as the result of a federal statute that appropriated monies for programs promoting sexual abstinence.

The GPA used its money in a variety of way, one of which was to grant public funds to organizations and individuals, such as non-profit organizations or "professional service contracts," to promote abstinence. Several of these community-based contracts were awarded to organizations that were religiously affiliated.

The ACLU claimed that some of the "contractors" used the contracts to further their religious message and was a violation of the Establishment Clause of the First Amendment. One group, the Rapides Station Community Ministries, stated in its monthly report, "We were able to focus on the virgin birth and make it apparent that God [desired] sexual purity as a way of life." The Ministries also noted that the GPA funding was used to host a back-to-school youth revival that "proclaimed God's Word with power as to why we should live pure and Holy." Another group performed skits for students in which a character named "the Bible Guy," challenged students about their beliefs and stated that, "As Christians, our bodies belong to the Lord, not to us."

The plaintiffs sought an injunction barring the distribution of government monies to organizations and individuals who used the contracts for sectarian purposes.

HOLDING:

The district court granted an injunction enjoining the state of Louisiana from distributing public monies to organizations or individuals that advanced religion through the Governor's Program on Abstinence.

RATIONALE:

The judge, G. Thomas Porteous, Jr., wrote that there was ample evidence that many of the groups participating in the GPA were "furthering religious objectives." The judge, in applying the "Lemon Test," ruled that the state passed the first prong because there was no evidence that the GPA was motivated by anything other than a secular purpose. However, when he applied the second prong of the test," he found that the monies were going to organizations that were "pervasively sectarian," resulting in the advancement of religion.

The judge ordered that the GPA office was to "cease and desist from disbursing GPA funds to organizations and individuals that convey religious messages or otherwise advance religion in any way in the course of an event supported in whole or in part by GPA funds, or in any document or other resource that is produced and/or distributed in whole or in part using GPA funds. He also ordered the state to install safeguards to ensure compliance with the order.

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SANTA FE INDEPENDENT SCHOOL DISTRICT v. DOE
120 S.Ct. 2266 (2000)

FACTS:

Prior to 1995, a student elected as Santa Fe High School's (Galveston, Texas) student council chaplain delivered a prayer over the public address system before each home varsity football game. In April of 1995, two students, one Mormon and one Catholic, challenged this practice as being violative of the Establishment Clause of the First Amendment and moved for a temporary restraining order. The respondents alleged that the district had engaged in several proselytizing practices, such as promoting attendance at a Baptist revival meeting, encouraging membership in religious clubs, chastising children who held minority religious beliefs, and distributing Gideon Bibles on school premises. They also alleged that the district allowed students to read Christian invocations and benedictions from the stage at graduation ceremonies. In May 1995, the District Court entered an interim order addressing a number of different issues, one of which was graduation prayer and football game prayers. The court ruled that at graduation a "non-denominational prayer" consisting of "an invocation and/or benediction" could be presented by a senior student or students selected by members of the graduating class, as long as the text of the prayer was determined by students without scrutiny or pre-approval by school officials. In response to that portion of the order, the school district adopted a series of policies over several months dealing with prayer at school functions. One policy, titled "Prayer at Football Games," authorized two student elections, the first to determine whether "invocations" should be delivered, and the second to select a spokesperson to deliver them. It contained two parts, an initial statement that omitted any requirement that the content of the invocation be "nonsectarian and non-proselytizing," and a fallback provision that automatically added that limitation if the preferred policy should be enjoined. The students chose to allow a student to say a prayer at football games. The District Court did enter an order precluding enforcement of the first, open-ended policy. Both parties appealed, the district contending that the enjoined portion of the policy was permissible and the Does contending that both alternatives violated the Establishment Clause. The Fifth Circuit Court of Appeals ruled that the district's policy was unconstitutional. In citing the *Jones v. Clear Creek* case, the Fifth Circuit reaffirmed that the *Clear Creek* ruling only permitted student-led prayer at graduation ceremonies as a way to solemnize this once-in-a-lifetime event. The appeals court stated that a football game is "hardly the type of annual event that can be appropriately solemnized with prayer." The school district appealed to the U.S. Supreme Court.

HOLDING:

The Supreme Court (6-3) affirmed the Fifth Circuit Court of Appeals' ruling.

RATIONALE:

The Court stated that "The Constitution demands that schools not force on students the difficult choice between whether to attend these games or to risk facing a personally offensive religious ritual." The Court felt that such a policy coerces student participation in religious events. Even though students were elected by other students

to give the prayer, the Court stated that the school district allowed the students to vote on a religious matter. The student speech could not be considered "private speech," according to the Court. "The delivery of such a message over the school's public address system, by a speaker representing the student body, under the supervision of school faculty, and pursuant to a school policy that explicitly and implicitly encourages public prayer — is not properly characterized as "private speech." Only one student is permitted to give a content-limited message and this suggests that the policy is not free expression.

III. The Administrator's Dilemma

What does a practicing administrator do from day to day and year to year when the law clearly states that common practices at school assemblies and daily classroom routines advocating religion are unconstitutional, but the mores of the community are otherwise? In reality, it becomes a balancing act of walking a tightrope. One can veer to the left or right minutely and suffer the consequences. Whether one falls to the left or to the right, there appears a significant price to pay. Negative consequences occur regardless.

The practice of saying a prayer at school assemblies, athletic events and before meals is quite common and expected in many Louisiana schools, especially rural communities. Christmas and Easter programs are thought to be as much of the school curriculum as reading, writing, and arithmetic in the elementary grades. The distribution of Bibles by the Gideons is welcomed and looked upon with favor. These are but a few of the issues facing practicing administrators on a daily basis. The following dilemmas are representative of the many decisions one must make yearly, perhaps even daily.

Dilemma #1

The invocation and benediction are a piece of the cultural norms that exist for school assemblies. In a heavily populated rural school, it is the norm that each year at the school awards program, a minister from one of the community churches is invited to give the invocation and the benediction. Rotation of the invitation occurs yearly until all area churches in the community have been represented through this annual event. If the principal made the decision to cease invitations to assemblies for prayer, the citizenry of the community and church members would be outraged. They want their ministers involved in, and aware of, their children's accomplishments. The support of the church in advocating education is essential to parents; thus, they believe the support of the school in advocating church involvement is essential. The old educational cliché, "it takes a whole village to raise a child," is used against the school. The community has previously embraced this belief and now the school is asking that the church not openly participate in educational accomplishments. Are the area ministers not included in the "village"? If the principal chooses not to continue the practice, the program is unattended by the parents and the community, one of the very reasons for the practice. If the principal chooses not to have the program due to nonparticipation, the system reprimands for poor community involvement. If the principal continues the program with prayer, the negative consequences could be great for the system.

Dilemma #2

Prayer at the opening of athletic events is a sacred norm for many schools within given communities. Not only is it delivered over the public address system, but it is also engaged in by team players in small huddles before and after games. The question that is in contrast to the law is echoed loudly from the parents. Comments from parents are inclusive of the following: "How dare one in leadership, the principal and/or the coach, not ask God to protect our children on the playing field or court?" "If this isn't allowed, then my child won't play." With comments such as these, what does the principal do? Allow prayer or not support team sports at school.

Dilemma #3

Prayer before meals, specifically lunch in the early grades, is yet another dilemma which the principal faces on a daily basis. It has, in the past, been the responsibility of the kindergarten and first grade teachers to instill the habit of "saying the blessing," as well as to ensure "learning the blessing" for children under their supervision. Again, parents regard this as a disgrace for a principal not to support, encourage, and even require the practice. It is considered as essential as teaching young children to wash their hands before meals. It becomes a burden for principals when parents begin to request kindergarten and first grade teachers for their children based on the teacher teaching students to say a prayer before lunch. The lunch prayer is considered by many parents to be part of the school curriculum in the early grades. On the other hand, suppose the principal is made aware that the parent of a particular student in one kindergarten classroom is opposed to prayer before lunch and asks the teacher to discontinue the practice and the teacher refuses because of the pressure from the other parents. The principal and teacher find themselves being ridiculed by proponents of prayer, as well as the oppositional parent.

Dilemma #4

The Gideon Bibles are yet another example that creates a dilemma for principals. In many rural schools with a large at-risk student population, the Bible received at school is not only expected, but almost essential and necessary. Why? Children at local churches are encouraged and expected to bring the Bible to Sunday School. Often they are counted, and rewards given, for bringing the Bible while in attendance. What happens when the impoverished child has not been given a Bible at school? The child doesn't have one and the result is a felt inadequacy and perhaps a lack of attendance at the local church. Parents, church members and ministers begin to question why this school hasn't issued or allowed distribution of this much needed resource to the most needy of children. It is expected by the community that the principal ensure school contact with the Gideons and that teachers ensure that certain "needy" students are given a Bible. How then can a principal and a teacher select a particular student, single that student out of the student body, and ensure a Bible is given and taken home without being concerned about violating the Constitution?

In summary, it must be emphasized that parents are vocal in their efforts to make sure religious traditions continue. Many administrators feel the pressure to succumb to the demands of the public they serve rather than adhere to the law. Either decision could result in loss of a job. It's walking the tightrope, looking ahead to see how far one might travel, and looking below to see how far one might fall, that makes the decision so challenging.

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